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9/29/94

From: STEVE SIEGEL
To: R5WST.R5WASTE (STREET-KERRY)
Date: Thursday, September 29, 1994 11:16 am
Subject: Bill's on his way over. Some comments. -Reply -Reply
-Reply

40 CFR 300.825 (c) requires us to consider comments submitted after the comment period if certain conditions are met. As a practical matter, we need to review the comments to see if they meet those conditions. Also as a practical matter, while the NCP does not say when we must consider those comments, it makes little sense to receive the comments (which theoretically could alter the ROD) in July, issue a UAO in September based on the ROD, and then sometime later look for the first time at the comments to see if the ROD needs reconsideration. It is my understanding from Bill that he has reviewed the petition, discussed it with you, and that you both have rejected the position put forth in the petition. That is why I've included the petition in the administrative record now. If you both tell me the petition was not considered, then we need to remove it from the administrative record at this time. However, I am confident that if we don't have it in the record now, they will submit the petition as part of their comments on the UAO, and it will enter the record that way and give us the appearance of acting in disregard of their petition. I also recommend that we respond to comments received on the UAO, because if we have to enforce it one day, we do not want to appear arbitrary and capricious.

US EPA RECORDS CENTER REGION 5



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9/29/94

From: KERRY STREET
To: R5ORC.R5ORC1(SIEGEL-STEVEN)
Date: Thursday, September 29, 1994 4:53 pm
Subject: Bill's on his way over. Some comments. -Reply -Reply
-Reply -Reply

Thanks for the citation, 40CFR300.825. Only one of the situations seems to apply to ACS. It looks like, under the NCP, we are required to consider comments submitted by interested persons after the close of public comment only to the extent that the comments contain significant information not contained elsewhere in the administrative record which could not have been submitted during public comment and which substantially support the need to significantly alter the response action. Since we are not significantly altering the response action, I don't see the need to include the petition in the administrative record.

If you believe that the Agency is not going to substantially alter the response action, then inclusion of the petition would seem to imply a significant alteration that is not true, which I am afraid could be a problem later when someone asks why it's in the administrative record. If the Agency is intending to significantly alter the remedy, then I'd like to know that now. This is an expensive cleanup. This is also a nasty site. If the concepts on which the remedy is based are no longer valid, then the Agency should not issue the UAO. I do not know that to be the case.

My biggest concern is that by making the petition part of the administrative record we are giving it more status than it deserves, and putting ourselves in a position of justifying its inclusion. Kind of like having an extra public comment period on NL Industries for no good reason.

Please let me know what I am missing.

CC: bolen-bill